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FEB 26 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video)	MM Docket No. 95-176
Description of Video Programming)	
)	
Implementation of Section 305 of the)	
Telecommunications Act of 1996)	

**Comments of
Northern Virginia Resource Center
for Deaf and Hard of Hearing Persons**

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Inc.**

Introduction

The Northern Virginia Resource Center for Deaf and Hard of Hearing Persons (NVRC) submits these comments to the Federal Communications Commission on its Notice of Proposed Rulemaking on Closed Captioning and Video Description. NVRC is a nonprofit organization with a mission to serve as a catalyst in the empowerment of people who are deaf and hard of hearing. The Center provides information and referral, education programs, advocacy and technical assistance to consumers, parents, professionals and the community in the Northern Virginia Metropolitan area. More than 160,000 deaf and hard of hearing persons reside in this area.

Closed captioning of television programming continues to be one of the top priorities of NVRC because captioning-related issues consistently head the list of needs on consumer surveys. While much captioning progress has been made, consumers still request that 100% of all programming be captioned so that they have truly equal access in their viewing.

NVRC applauds the fine work by the Federal Communications Commission in providing this opportunity to comment on an issue of such importance to our community.

Available Captioning Resources

24. Our service area includes the headquarters of the National Court Reporters Association, and we are privileged to be located near the offices of two of the most experienced captioning companies in the country. Also in our service area is one of the country's approved court reporter education programs. We have seen vast increases in the number of individuals and companies with the ability to provide closed captioning, and we believe that this trend will continue.

Responsibility for Captioning

28. NVRC strongly supports placing the responsibility for compliance with closed captioning requirements with video programming providers. For several years we have worked with local library systems and school systems to advocate for the captioning of educational videotapes. NVRC has found that when those with the clout brought by purchasing power require that any materials purchased be captioned, the individual producers have a great deal more incentive to provide captions. This greater demand for captioning has also helped to drive the cost down.

Transition Rules for New Programming and Library Programming

41. NVRC strongly objects to the proposed transition schedule of eight years for phasing in captioning of non-exempt new programming, and requiring an additional 25% every two years. The consumers with whom we have discussed this proposal unanimously state that this is far too long a transition period. (P 41) We also object to allowing a ten year transition period. We support other consumer organizations in the request for a two to three year time frame.

NVRC is also concerned that there are many providers with whom we have worked for years to encourage captioning who already exceed 25% captioning of their programming. These providers should not be penalized for their progress, but we also believe they should not be given disincentives to continuing to reach the goal of 100%.

Pre-recorded captioned programs that are reformatted and rebroadcast should not be included in the 25% figure; it should apply only to new programming. The cost and effort of reformatting is minimal and can be easily absorbed by most providers.

42. NVRC supports news, current affairs, and educational programs for children to be given priority for captioning where necessary. Except for children's programming, prime time programming should take precedence over programs aired during other time slots.
43. We strongly opposed permitting a cable operator to transmit one particular cable network completely captioned while transmitting three with no captioning, or permitting a cable system to meet its obligation by passing through the captioned programs of the broadcast stations it carries. Caption-using consumers want to experience the same variety and choices as everyone else.
45. NVRC supports a one week time period to determine whether a percentage requirement has been met. Consumers are used to a weekly schedule for their programs, and program guides are distributed every week.
46. NVRC has heard reports from consumers that recently some cable channels have reduced the captioning of their programs. We are concerned that providers may feel that they are already meeting a 25% goal so they are cutting back to the bare minimum they think will be required.
47. We support applying captioning requirements to each channel of a multiplexed channel. Each channel markets its offerings separately.
58. The Commission seeks comment on a transition schedule for library programming. While many library programs are already captioned, they are often aired without captions. NVRC believes that, at minimum, providers should be required to inventory all programs currently captioned within a short time frame after the effective date of the rules, and should report to the Commission on which programs are currently available with captions. These programs already available in captioned versions should be required to air only captioned versions.

We recommend that library programming that is exhibited be subject to the same phase-in timelines as new programming. While captioning

all library programming is a large undertaking, many deaf and hard of hearing persons and their families are interested in or students of archived material and classic films.

Exemptions of Classes of Video Programming

64. Interstitials are important to many caption users. NVRC supports such items as coming attractions and previous plot summaries at the beginning of programs being made available with captions.

The frustration of many who depend on captions is illustrated in this letter to NVRC from a consumer using captions for the first time:

"For the first time last evening I used the decoder to watch 'Chicago Hope' on CBS. When the show first comes on, they air scenes from the previous shows for background and then they show a 'teaser' about that night's program. None of this was captioned. In fact, I thought I had done something wrong and the new decoder wasn't working! When the program finally began in earnest, the captions showed up. Then, somewhere near the middle of the program in a segment where there was a lot of dialogue, the caption said "TEST" with none of the dialogue showing. After a few lines during which the actors were speaking and captions weren't visible, suddenly captions resumed. This seemed really strange to me. Is this extraordinary or something that occurs routinely? Why is it that, during programs that are captioned, commercials aren't?"

68. Local and regional sporting events can be captioned from a remote location if needed. We do not support a blanket exemption for them.
72. NVRC supports requiring captions for foreign language programs which use a Latin-based alphabet. Many deaf and hard of hearing persons and their families enjoy learning about other languages and cultures. We do not support a long-term exemption for programs using non-Latin alphabets, since advanced television closed captioning standards are incorporating provisions for non-Latin based alphabets.
73. We support the Consumer Action Network's recommendation that the definition of "programming that is primarily textual in nature" take

into account the purpose of the audio and whether any information is provided that is necessary to understand the program.

74. The Commission asks whether Public, Educational, and Governmental (PEG) access channel programming should be encompassed by general exemptions. (P 74). We do not support such an exemption. These programs are often supported directly or indirectly by tax dollars. Government staff often create or purchase such programming. Having equal access to the information provided is important to a sense of community, since it gives information about important events and issues and opportunities for participation. One PEG access channel in our service area already provides captioning for some government meetings, and a second is making plans to provide it as well.
76. NVRC has heard from many deaf and hard of hearing adults who would like to be able to take educational courses being broadcast by area colleges and universities, but they are unable to do so due to lack of captioning.
78. We support the Commission's decision not to propose home shopping programming for an exemption. The audio information provides descriptions that are important for making wise purchasing decisions.
79. We support the Commission's proposal that if interstitials and promotional advertisements are exempted, "the information provided should be displayed in some textual or graphic form." Such text or graphics information should be required to highlight the most important information conveyed in the interstitial or advertisement and should be easily readable.
80. NVRC supports the same requirement for text and graphics information for political advertising that is deemed economically burdensome. Information about local elections is important to deaf and hard of hearing people in exercising their constitutional rights.
81. NVRC supports the comments of the Consumer Action Network that if fundraising activities of noncommercial broadcasters are given an

exemption, periodic textual graphics or captioning be provided during fundraising that would summarize activities.

82. NVRC supports the requirement to caption music programming without an exemption for live performances. Many deaf and hard of hearing adults enjoy music programs and performances, and any textual information that can help capture the atmosphere is important. Songs from television shows and feature films must be captioned because they provide information and enhance the program for viewers depending on text.
83. We support the Commission's proposal not to include weather programming in its general exemption. This information has been very important to consumers in our service area when making work, travel, and entertainment plans.
84. NVRC agrees with the Commission's proposal that only those types of sports programming for which closed captioning would be economically burdensome, such as locally produced college or high school sports, should be subject to an exemption. Where exemptions are granted, open graphics should be required to provide necessary information such as the score and time remaining. Other types of sports programming should be captioned, and the captioning should include commentary, which is important for understanding and appreciation of the game and the athletes.
85. NVRC strongly supports the Commission's decision not to exempt classes of video providers.
87. We recommend that the Commission require providers seeking exemptions due to contracts to show that there is a legitimate, good faith reason for any contract clause of this type before an exemption is granted.

Undue Burden Exemptions

90. NVRC is opposed to granting of a blanket exemption for undue burden. We support case-by-case review of exemptions. Exemptions should be given only for cases in which the program would be unable to air because of the cost of captioning.

97. NVRC recommends that considerations for exemptions should take into account all assets such as the revenue base of the parent company. A small cable company or channel should not be allowed to declare itself financially burdened when it is actually owned by a financially successful larger entity. We support making some requirements when granting an undue burden exemption, such as greater use of textual graphics.

101. We does not support program producers and syndicators being permitted to seek an exemption from the closed captioning requirements unless they are covered by the Commission's rules.

109. We recommend a time limitation for exemptions granted under 713 (d)(3) should be limited of no more than one year.

Standards for Accuracy and Quality

NVRC believes strongly that all caption producers should be required to follow the voluntary industry guidelines published by the Electronic Industries Association. The guidelines, "EIA 608 - Recommended Practice for Line 21 Data Service", call for certain practices that will protect the owners of early generations of set-top closed caption decoder boxes (the TC 1 and TC 2) until at least July 1, 2002 through the limited use of advanced FCC-standard codes.

110. NVRC supports the Commission's proposal to extend Section 76.606, requiring cable operators to transmit existing captions intact to all video program providers. One of the most frequent complaints we hear from consumers who use captions is the deterioration in quality caused by stripping of captions or lack of quality control.

We share the concerns of the Consumer Action Network about the actual quality of the captioning. As the Commission recognizes, "unless closed captions accurately reflect the audio portion of the video programming to which they are attached, they may be of limited use to the viewer." (FCC Report P87)

NVRC strongly supports the requirements proposed by the Consumer Action Network for some minimal standards for the non-technical aspects of quality and accuracy, including:

- Individuals who depend on captioning must receive information about the audio portion of the program which is functionally equivalent to the information available through the program's soundtrack. Caption data and information contained in the soundtrack must be delivered intact throughout the entire program.
- Standards for proper spelling must be devised. Spelling should be considered a technical aspect of captioning, as the accurate written representation of the spoken word depends on proper spelling.
- Captioning must be reformatted as necessary if the programs on which they are included have been compressed or edited.
- Program tapes should be labeled as to whether they are captioned to ensure that the closed captioned master tape is used for duplication as the program moves through the distribution chain.

112. NVRC is extremely disappointed that the Commission does not plan to immediately set requirements for quality standards. Mistakes in spelling and grammar and wrong placement of captions are extremely distracting for all viewers. They are a disservice to those who use captions to learn the English language. Such standards are already being used by several captioning providers and associations. We recommend that the Commission review the quality of captions within one year of the effective date of the rules and, if necessary, set requirements for quality standards no later than two years from the effective date.

Enforcement

123. NVRC is greatly concerned with the Commission's proposal that viewers with complaints about captioning first notify the video programming provider before filing with the Commission, and allow the provider a period of time to resolve the complaint at the local level.

During the past few years, NVRC has received reports from many consumers who have unsuccessfully attempted to do just that.

Not only do most people not know who to contact with a complaint, but they also are often called upon to explain the technology to staff who know nothing about captioning and decoders. Many times when they call a television station, they are passed on from one staff person to another before they find a person familiar with captioning.

Recently, NVRC was contacted by the husband of a deafened individual. The husband, who is hearing, had been calling the local cable company to report problems with captioning and to try to get resolution. He was told by staff at the cable company that they had never received complaints from others about captions. Yet NVRC staff had discussed captioning problems with staff of the cable company less than five months ago, and a staff member had also called several times to report problems with her own captioning. Not only that, NVRC staff had heard from several other consumers that their TTY calls, voice calls, and e-mails about problems were never responded to by this company.

Quite often when calling about problems, the local provider has told consumers that the problem is not at the local level. Most consumers do not have the time or expertise to investigate the source of the problem.

It is not clear from the Commission's proposal what type of good faith effort is necessary on the part of the provider to resolve the complaint and ensure that the problem does not occur again, and reasonable time limits for resolving the complaint have not been set.

We recommend that the Commission set up complaint channels so that consumers have a central place to which they can easily address their complaints.

NVRC supports the Consumer Action Network proposal that, in addition to this, the Commission establish a council for the resolution of complaints. We agree that this council would be a good resource to provide information to consumers on the responsibility of video providers and serve as a liaison between consumers and providers. It could gather, track, and resolve complaints for the industry. It could also work with the provider and others in the industry to ensure the problem does not occur again.

124. We support the Commission's proposal that providers be required to retain in a public file, or have available on request, records sufficient to verify compliance on the amount of closed captioning they provide.

NVRC respectfully requests that the final rules address enforcement provisions and provide more information about timelines and potential penalties. The proposed rules do not make it clear what recourse consumers have if the rules are not met.

Conclusion

NVRC thanks the Commission for the opportunity to comment on these proposed regulations, which are very important to us. We commend the Commission for its commitment in developing these proposed rules.

Respectfully submitted,

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